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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements	Rulemaking 16-02-007 (Filed February 11, 2016)

PROTECT OUR COMMUNITIES FOUNDATION OPPOSITION TO PETITION OF JOINT PARTIES FOR MODIFICATION OF DECISION NO. 18-02-018

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PROTECT OUR COMMUNITIES FOUNDATION OPPOSITION TO PETITION OF JOINT PARTIES FOR MODIFICATION OF DECISION NO. 18-02-018

Pursuant to the Rule 16.4 Protect Our Communities Foundation ("POC") submits the following Opposition to Petition of Joint Parties For Modification Of Decision No. 18-02-018 filed February 28, 2018 ("Petition") by Friends of the Earth, PG&E, Natural Resources Defense Council, and California Unions For Reliable Energy ("Petitioners") regarding D.18-02-01 ("Decision") in the above captioned proceeding. POC urges the Commission to deny the Petition forthright with prejudice as it represents an attempted misuse of the petition for modification process, does not establish any justification for a modification, is based upon several omissions and misstatements of material facts, and proposes a conclusion of law that is contrary to existing state law.

ARGUMENT

A. This Petition Should be Dismissed with Prejudice as a Prohibited Attempt to Misuse the Petition for Modification Process

In their Petition for Modification, Petitioners are not truly seeking a modification of the Decision, but are attempting to challenge the critical underpinning of the decision "to order procurement activities only after reviewing individual LSE IRP filings." (Decision at p. 154.) Petitioners present no argument not already made in this proceeding, instead rehashing arguments made by the individual parties to the Petition that were considered and addressed in the Decision. The appropriate procedural process is thus an application for rehearing pursuant to Rule 16.1, not a petition for modification. This petition for modification should, therefore, be dismissed with prejudice as procedurally improper.

A petition for modification asks the Commission to make changes to an issued decision. (Public Utilities Commission Rules of Practice and Procedure, Rule 16.4, subd. (a).) "A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit." (*Ibid*.)

Here, Petitioners are not asking for a change to the Decision based upon any new or changed facts, but are effectively asking the Commission to rehear the decision. In an application for rehearing, the applicant attempts to set forth "the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous." (Public Utilities Commission Rules of Practice and Procedure, Rule 16.1, subd. (a).) Here, Petitioners have

unsuccessfully attempted to argue that the Decision is erroneous, just as they did in the underlying proceeding. The argument in the Petition that the Decision should "provide direction regarding procurement of GHG-free resources to prevent any increase in GHG emissions after the generating units at Diablo Canyon are retired, as planned, in 2024-2025" (Petition at p. 5) was made by parties in this proceeding prior to the Decision, and specifically addressed in the Decision. The Decision states:

> A number of parties including FOE, GPI, IEP, Imperial County, and TURN) also pointed to the Commission's recent decision in the Diablo Canyon proceeding (D.18-01-022), adopted after this proposed decision was issued, as a further reason that the Commission should order procurement of additional GHG-free resources in this decision. Specifically, D.18-01-022 requires that PG&E be prepared to present scenarios assuming retirement dates for the Diablo Canyon plant prior to 2024/2025, "including ones that demonstrate no more than a de minimus increase in the GHG emissions of its electric portfolio."22 In response to this directive, and in keeping with our direction discussed above to order procurement activities only after reviewing individual LSE IRP filings, we will specifically require that PG&E present alternative portfolios for our consideration in its IRP filing, if it proposes or intends to retire Diablo Canyon at any time prior to the expected 2024/2025 retirement date.

(Decision at pp. 154-155.)

The suggested "modifications" in the Petition echo changes to the Decision proposed by parties to the Petition earlier in this proceeding. For example, in its Comments on the Proposed Decision, Friends of the Earth proposed adding the following language:

> With respect to the planned retirement of the Diablo Canyon Power Plant in 2024-2025, the Commission in D.18-01-022 has directed that steps be taken in the instant IRP proceeding to ensure that no increase in GHG emissions be allowed to occur as a consequence. Accordingly, this Decision provides for a Commission-mandated and -supervised program for procurement of new, GHG-free resources by all LSEs in the northern and central California electric service territory of PG&E, to replace the output of the generating units at Diablo Canyon ("Replacement Resources"). The goal is to ensure that there will be no increase in GHG emissions as a consequence of the retirement of the Diablo Canyon generating units in 2024-2025.

(R.16-02-007, Comments of Friends of the Earth on the Assigned Commissioners Proposed Decision Appendix.)

In its Comments on the Proposed Decision, California Unions for Renewable Energy proposed adding the following language to the proposed decision:

> To avoid an unacceptable increase in GHG emissions, the Commission will begin a procurement program, within 30 days of the adoption of this decision, to replace Diablo Canyon's output with a portfolio of new, GHG-free resources to be procured or paid for by all LSE's in PG&E's service territory.

(R.16-02-007, California Unions For Reliable Energy Opening Comments On The Proposed Decision Setting Requirements For Load Serving Entities Filing Integrated Resource Plans Appendix.)

A quick comparison of the earlier proposals and that made in the Petition makes it clear that, in the Petition, Petitioners have proposed only a watered down version of already suggested, considered, and disposed-of changes:

> The Commission in D.18-01-022 has directed that steps be taken in this IRP proceeding to ensure that no increase in GHG emissions occur as a consequence of retiring the generating units at Diablo Canyon. To carry out the Commission's intention, this Decision provides clear direction to all load serving entities that the Commission will expressly evaluate the adequacy of their specific resource plans in contributing to avoiding any increase in greenhouse gas emissions from the closure of Diablo Canyon.

(Petition for Modification Appendix.)

Petitioners have presented no new facts and have not even attempted to argue that there has been any change in circumstances that calls for a modification. Instead, Petitioners have attempted to use the petition for modification process to challenge the Decision as erroneous. Petitioners could have filed an application for rehearing if unhappy with the Decision but did not, instead filing a petition for modification. Such a misuse of the petition for modification process has been stuck down by the courts and should be done so here. (See *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 951.)

B. The Petition for Modification Lacks any Justification and is Based on Omissions and Misstatements of Material Facts

1. The Decision Addresses Procurement Intended to Decrease GHG Emissions Through 2030

Petitioners have provided no justification for their Petition and have misstated or omitted several material facts in support of the Petition. The basic premise of the Petition for Modification is that, "As it stands, the IRP Decision is completely silent about procurement aimed at stemming an increase in GHG emission after the 2024-2025 time-frame." (Petition at p. 5.) The Decision is hardly silent on this point. First, the Decision clearly states that the modeling upon which the decision is based includes "Diablo Canyon Power Plant: retired in 2024/25" as a supply side resource. (Decision at p. 34.) The Decision approves the Preferred Reference System Plan which plans for procurement through 2030 based upon the results of the modeling. Because the modeling assumes 2024-2025 retirement of Diablo Canyon, any procurement ordered based upon the model addresses retirement of Diablo Canyon during and after 2024-2025.

Secondly, the Decision adopted a GHG emissions target of 42 MMT in 2030, representing a 50% reduction from 2015, and about 60% reduction from 1990 levels. The modeling, as adopted in the Decision, shows that the state's existing policies, for energy efficiency, storage, and 50% RPS, would reach approximately 51 MMT in 2030. The 42 MMT target, with GHG emission reductions of 9 MMT beyond existing policies, easily offsets the loss of Diablo Canyon. Based upon PG&E's testimony in the Diablo Canyon proceeding,

replacement generation for Diablo Canyon could have contributed approximately 6 MMT/year after 2025, far less than the 9 MMT that the Decision plans for.[1]

The Decision already provides direction for GHG emission reductions covering nearly 75% of retail sales in California. This will accomplish much more than merely replacing 6% of the state's electricity provided by Diablo Canyon with GHG-free resources. The replacement of Diablo Canyon generation will not be provided by any individual LSE's IRP, but rather by the far larger requirement that each IRP contribute its fair share toward the aggregate 60% GHG emission target of 42 MMT by 2030 and thus Petitioners claim that the Decision is "completely silent about procurement aimed at stemming an increase in GHG emission after the 2024-2025 time-frame" is markedly untrue. To the contrary, the Decision directs a dramatic decrease in GHG emissions for the electricity sector as a whole. Furthermore, forcing each LSE to identify how it is replacing one particular power plant, as Petitioners urge, would be extremely onerous, and provide no additional benefit beyond the current policy direction provided in the Decision, which already takes Diablo Canyon's retirement into account.

The Decision also *far exceeds* the original GHG-free replacement procurement made by the Petitioners in their original proposal in the Diablo Canyon proceeding (the "Joint Proposal") and relied upon in the Petition (see Petition at p. 3). That proposal was for 2,000 GWh of early procurement of energy efficiency, another 2,000 GWh of either efficiency or renewable energy

[1] In testimony for the Diablo Canyon proceeding, PG&E showed an emission factor of 0.428 metric tons per megawatt-hour of its fossil fuel and market purchases. Multiplying this by approximately 18 million megawatt-hours generated by Diablo Canyon per year equals 7.7 million metric tons (MMT) avoided CO2 emissions. However, according to PG&E testimony, Diablo Canyon's generation would have had to be reduced to 16.3 million megawatt-hours after 2025 to accommodate loss of once-through cooling, and PG&E estimated that continued operation of the plant as baseload would have increased curtailment of existing renewables by 850 to 3500 gigawatt-hours per year--meaning this part of Diablo Canyon's output will not displace fossil fuel but rather renewable energy. These combined effects would have reduced the avoided GHG emission of continued operation of Diablo Canyon to about 5.5 to 6.6 MMT CO2/year after 2025. (See A.16-08-006, PG&E Testimony, Errata to Chapter 3 Workpapers Table 3-2.)

from 2025 to 2030, and a 55% voluntary RPS specific only to PG&E after 2030 assuming that a higher renewable requirement was not adopted. (A.16-08-006, Application at p. 9; See also D.18-01-022 at p. 3.) The Decision that Petitioners now challenge plans for procurement that "would represent achieving somewhere between 53-57% renewables by 2030" for all the IOUs, CCAs, and DA providers, which is roughly equivalent to a 54% to 59% RPS. (Decision at p. 48.) This is obviously a far larger commitment than a 55% voluntary RPS for PG&E alone that Petitioners advocated for. Furthermore, the Decision assumes reaching 1.5 times the additional efficiency from the CED 2015 forecast, toward complying with the SB 350 doubling target. This again far exceeds the 2,000 GWh of energy efficiency proposed in the Joint Proposal.

2. The Decision is Consistent with D.18-01-022

Petitioners allege that the Decision is inconsistent with D.18-01-022 (See Petition at pp. 1-2, 5-6) and that "avoid[ing] any increase in greenhouse gas emission from the closure of Diablo Canyon . . . is expected to require the procurement of substantial new GHG-free resources." (Petition at p. 3.) However, contrary to Petitioners' assertions, the Decision is entirely consistent with D.18-01-022 in that both do *not* require procurement for LSEs to replace Diablo Canyon when it retires by 2025. In both cases, this was for the same reason: Petitioners presented an abstract procurement request, that would cost billions of dollars, without any adequate description, evaluation, or proposed process to demonstrate the procurement needs of PG&E or other LSEs.

Petitioner's argument is not only inaccurate but acceptance of it could have dire consequences. If the PUC were to order specific procurement prior to evaluating need through the IRP process, the result could be a high level of stranded assets that would undermine the

competitive force, particularly from CCAs, that is currently leading the state to higher levels of renewable energy than would have otherwise been the case. The CCAs are doing this in two ways: 1) CCAs directly procure more renewable energy than is currently required by state law, and 2) the growth of CCA reduces utility retail sales, which increases the percentage of IOU retail sales from the existing renewable contracts.

The Commission has reported to the legislature that by 2020, a decade ahead of state mandates, the IOUs will reach a total amount of renewable energy equal to 50% of retail sales.[2] CCAs already averaged about 47% of retail sales from renewable sources in 2016.[3] So, there is no need to "direct" IOUs or CCAs to "replace" Diablo Canyon, because the LSEs are already doing so without the need for any such direction and, ordering procurement in the fashion Petitioners desire would disrupt a system that is already working.

3. Petitioners Suggested New Conclusion of Law is Contrary to Existing State Law

Similar to their attempts in the Diablo Canyon proceeding, Petitioners here have suggested language that amounts only to an abstract demand for some sort of procurement, without any adequate description, evaluation, or proposed process to demonstrate need for such procurement or to fulfill the alleged need. Petitioners have proposed only adding conclusory statements to the Decision without proposing any language that justifies why Diablo Canyon requires special treatment or explaining how their vague plan would be effectuated.

[2] (Public Utilities Commission, *Annual RPS Annual Report to the Legislature* (November 2017) at p.1, available at: http://www.cpuc.ca.gov/uploadedFiles/CPUC_Website/Content/Utilities_and_Industries/Energy/Reports_and_White_Papers/Nov%202017%20-%20RPS%20Annual%20Report.pdf.)
[3] (*Id*. at p.13.)

What has been suggested is a new conclusion of law that would be contrary to existing state law: "To carry out the Commission's intention, this Decision provides clear direction to all load serving entities that the Commission will expressly evaluate the adequacy of their specific resource plans in contributing to avoiding any increase in greenhouse gas emissions from the closure of Diablo Canyon." (Petition for Modification Appendix).

There is no state law linking any requirement regarding GHG emissions specifically to Diablo Canyon. On the contrary, relevant state law, including AB 32, SB 32, and SB 350, is much more holistic, and effective, in requiring specific levels of overall reduction of emissions for the entire state and, in the case of SB 350, to direct that a target be established for the electricity sector in particular. The Commission has fulfilled its statutory commitments by requiring compliance with the RPS, and setting a very ambitious GHG target of 42 MMT by 2030 for the electricity sector. As explained above, this target already includes the planning assumption for retirement of Diablo Canyon, and may be considered to include a reduction adder for "replacing" Diablo Canyon because the 42 MMT target is at least 9 MMT lower than the existing state policies, more than offsetting the loss of Diablo Canyon beyond the state's other policy targets.

CONCLUSION

With the Petition for Modification, Petitioners attempt to relitigate matters already properly decided in this proceeding utilizing an improper procedural process and do so contrary to state law and based upon omissions and misstatements of fact. The Petition should, therefore, be denied with prejudice.

Respectfully submitted,

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